

# PERSPECTIVES

## PRIVATE EQUITY MARKET INSIGHTS

### R&W Insurance in North American M&A Transactions

Representations and warranties insurance (RWI) has been available as a risk mitigation tool in M&A transactions since the late 1990s. For many years, only a small number of underwriters offered these policies. However, over the past five years, demand for RWI has grown significantly, prompting many new insurers to enter the market. Today, there are nearly 30 underwriters offering RWI policies. This increased competition has driven down rates and contributed to the widespread adoption of RWI, particularly in the middle market.

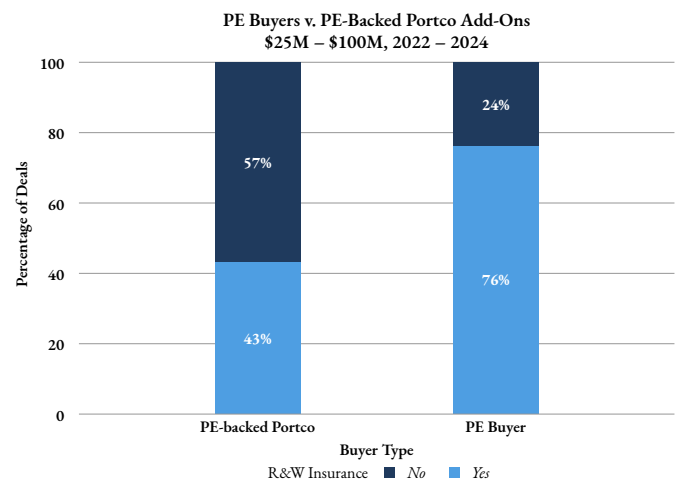
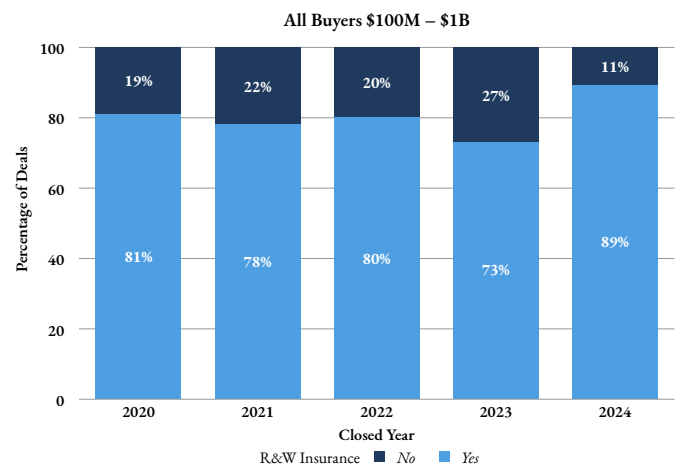
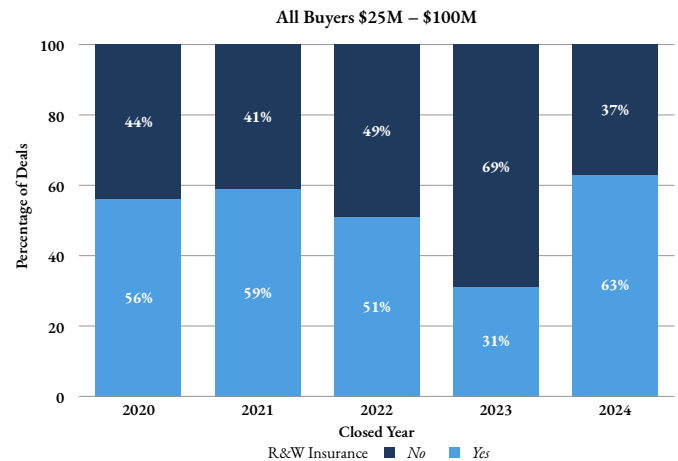
Despite its growing popularity, the use of RWI varies depending on deal size and context. In larger transactions (over \$2 billion), RWI is less common, as buyers often perceive the policies as less valuable due to higher relative costs and larger retention amounts. Conversely, while insurers have made efforts to expand RWI offerings to smaller deals (especially those under \$50 million), adoption remains more limited. Factors contributing to this include the cost of RWI relative to the transaction size, the expense and effort required to complete insurer-mandated diligence, and the willingness of sellers in smaller deals to provide indemnification.

RWI has become standard practice in certain sophisticated market segments. For example, in transactions with enterprise values between \$100 million and \$1 billion, RWI was used in nearly 90% of deals handled by R&G in 2024. In smaller transactions, with enterprise values between \$25 million and \$100 million, usage is more variable, with RWI obtained in only 63% of such deals handled by R&G in 2024. Notably, portfolio companies making add-on acquisitions use RWI at rates similar to direct acquisitions by private equity sponsors for deals over \$100 million. However, RWI is significantly less common in smaller add-on acquisitions, with only 43% of such deals between \$25 million and \$100 million utilizing RWI from 2022 to 2024.

Ropes & Gray maintains a proprietary database, *Ropes & Gray Market Analytics*, which collects and organizes data from the M&A transactions we advise on. This comprehensive database provides information on over 2,900 closed M&A transactions, including a mix of mid-cap and large-cap, as well as buy-side and sell-side engagements. The database offers Ropes & Gray clients unparalleled visibility into the M&A transaction landscape, keeping both our lawyers and clients one step ahead.

The charts presented depict data on M&A deals from 2020 to 2024.

#### R&W Insurance



## Indemnification in North American M&A Transactions

RWI has become a mainstream risk allocation mechanism in M&A transactions, especially among private equity sponsors. Parties often arrange for RWI to allow sellers to exit transactions without ongoing post-closing indemnification obligations, to help resolve negotiation impasses over indemnity terms, and to offer sellers more attractive terms in competitive auction settings. In most transactions involving sophisticated parties, sellers are still required to indemnify buyers for breaches of representations and warranties post-closing, but the specifics can vary based on deal size and the nature of the seller.

In transactions where the seller is an individual or a group of individuals (such as founders), or where the deal size is less than \$100 million, sellers are more likely to provide indemnification. This trend has been consistently observed in transactions handled by R&G over the past few years. Looking ahead, it will be interesting to see how the market evolves as the number of insurers continues to grow, potentially prompting insurers to broaden their client base. Both sponsors and founders can benefit from shifting certain risks to third-party insurers, particularly when founder-sellers remain involved in managing the target business as part of the portfolio company’s management team.

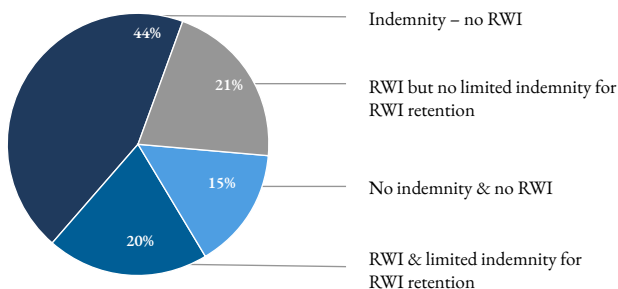
### Seller Indemnification Obligations and RWI, 2023–2024

M&A Transactions \$25M – \$1B

#### Deal Size

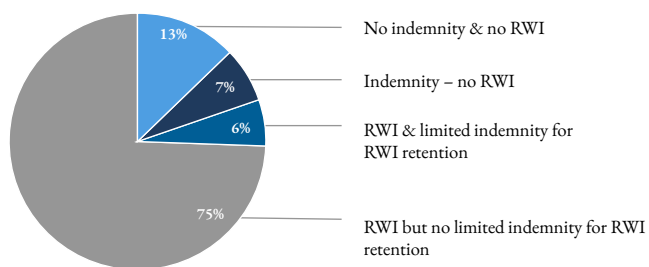
##### Small Cap (\$25–\$100M)

All Buyer & Sellers



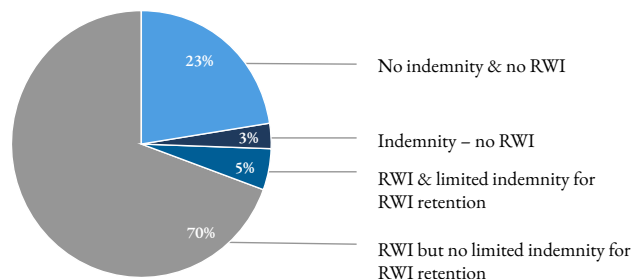
##### Mid Cap (\$100M–\$1B)

All Buyer & Sellers

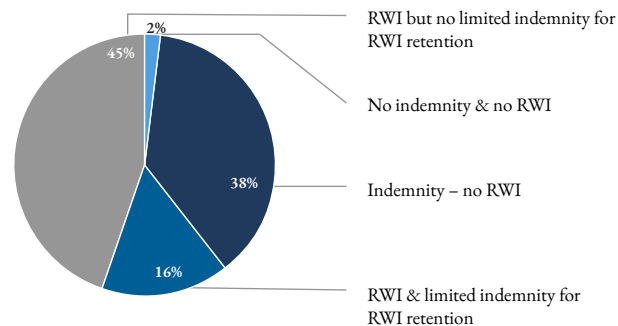


#### Seller Type

##### Financial Seller



##### Individual Seller



### Behind the Numbers

All charts and data are derived from an analysis of a selected set of 825 North American M&A transactions completed between January 2020 and December 2024 in the industries below.

~825

Deals

\$450+

Billion in transactions

